IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 3608 of 2006
WITH
Special Civil Application NO.5278 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BANSILAL HIRALAL MISTRY - Petitioner(s)
Versus
CHETAN CO.OP.HOUSING SOCIETY LTD. & 4 - Respondent(s)

==========

Appearance :
MR TRILOK J PATEL for Petitioner(s) : 1,
MR BK DAMANI for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/04/2006

ORAL JUDGMENT

1. Rule, so far as Special Civil Application No.5278 of 2006 is concerned. Shri Trilok J. Patel, learned advocate waives service of rule on behalf of respondent No.1. Ms

Maithili Mehta, learned AGP waives service of rule on behalf of respondent Nos.2 and 3.

2. With the consent of parties, the matter is taken up for final hearing today.

3. By way of Special Civil Application No.3608 of 2006, the petitioner and respondent No.1 of Special Civil Application No.5278 of 2005 has challenged the legality and validity of the judgment and order passed by the Deputy Collector, Viramgam Prant, Ahmedabad dated 10-11-2005 passed in Mamlatdar Court5/Revision/Case No.2/2005 in allowing the said revision application partly by quashing and setting aside the order passed by the Mamlatdar, Daskroi dated 12-8-2005 in Mamlatdar Courts Act Case No.8 of 2003.

So far as Special Civil Application No.5278 of 2006 is concerned, the petitioner and one of the respondents of Special Civil Application No.3608 of 2006 has challenged the order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 16-2-2006/18-2-2006 passed in Revision Application No.1 of 2005 in allowing the same in exercise of powers under Section 211 of the Bombay Land Revenue Code (for short "the Code") and in a proceedings challenging the order

passed by the District Panchayat, Ahmedabad in granting extension of the non-agricultural use permission for a further period of six months on certain condition challenged by respondent No.1 and petitioner of Special Civil Application No.3608 of 2006.

4. So far as Special Civil Application No.3608 of 2006 is concerned, it is required to be noted that the same is arising out of the proceedings under the Mamlatdar Courts Act and prima facie it appears to this court that against the order passed by the Deputy Collector passed in revision application arising out of the Mamlatdar Courts Act, a revision application is maintainable and in fact the petitioner of Special Civil Application No.3608 of 2006 did prefer Civil Revision Application No.20 of 2006 initially. However, an objection was raised by the respondents, therefore, the same was converted into Special Civil Application, which is numbered as Special Civil Application No.3608 of 2006. Be that as it may, it is required to be noted that the orders passed by the authority under the Mamlatdar Courts Act are normally for a temporary measure and are always subject to the rights/ right of way crystallized by the civil court in an appropriate proceedings/suit. Under the circumstances, Shri Patel has submitted that the petitioner will be

approaching the civil court for an appropriate relief of declaration and permanent injunction with regard to right of way for which the proceedings were initiated before the Mamlatdar Courts Act and the parties may be directed to maintain status quo for a period of one month so as to enable the petitioner of Special Civil Application No.3608 of 2006 to obtain appropriate interim order in an application below exh-5. Under the circumstances, the petitioner is permitted to withdraw Special Civil Application No.3608 of 2006 as the petitioner proposes to file civil suit for a relief of declaration and permanent injunction with regard to right of way and the parties are directed to maintain status quo as on today till 21st May, 2006 so as to enable the petitioner to obtain appropriate interim order below exh-5. However, it is made clear that this court has not expressed any opinion with regard to right of way and by continuance of interim order and/or directing the parties to maintain status quo till 21st May, 2005, it may not be construed that this court has expressed any opinion in favour of the petitioner. It will be for the concerned civil court to pass appropriate order in accordance with law and on merits in the suit and also below exh-5.

5. So far as Special Civil Application No.5278 of 2006

is concerned, the petitioner has challenged the legality and validity of the judgment and order passed by the Principal Secretary, Revenue Department (Appeals) dated 16-2-2006/18-2-2006 passed in Revision Application No.1 of 2005 by which the revisional authority in a revision application under Section 211 of the Code challenging the order of extension of non-agriculture use permission has directed to give right of way to respondent No.1 for going to his land bearing Block No.224.

6. It appears from the record that the non-agricultural use permission was granted with respect of land bearing survey Nos.225 and 226 in the year 1991 and the plans were also sanctioned vide order dated 26-6-1991. It appears that thereafter, the District Development Officer, Ahmedabad cancelled the non-agricultural use permission by its order dated 28-10-2004 and an application was given to the Executive Committee of District Panchayat, Ahmedabad to continue the non-agricultural use permission instead of cancelling it and requested for some more time and the Executive Committee of the District Panchayat, Ahmedabad vide order dated 24-12-2004 extended the period for further period of six months on certain condition. Being aggrieved by and dissatisfied with the same, respondent No.1 preferred

Revision Application No.1 of 2005 before the Secretary, Revenue Department (Appeals), State of Gujarat. The Principal Secretary (Appeals), State of Gujarat by its impugned judgment and order dated 16-2-2006/18-2-2006 allowed the said revision application and directed the District Panchayat, Ahmedabad to see that respondent No.1 gets right of way to go to his land bearing Block No.224 as per condition No.3 and non-agricultural use permission /order dated 26-6-1991. Being aggrieved by and dissatisfied with the said judgment and order dated 16-2-2006/18-2-2006 passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.1 of 2005, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

7. Shri MB Gandhi, learned advocate appearing on behalf of the petitioner has vehemently submitted that the direction issued by the Principal Secretary (Appeals), Revenue Department, State of Gujarat directing the District Panchayat to see that respondent No.1 gets right of way to go to his land bearing Block No.224 is without jurisdiction. He has also further submitted that the dispute with regard to right of way ought not to have been decided by the revisional authority in exercise of

powers under Section 211 of the Code, more particularly when respondent No.1 lost before the Deputy Collector in a proceedings under the Mamlatdar Courts Act and the dispute with regard to right of way continues. He has also further submitted that the revision before the revisional authority was against the order passed by the District Panchayat, Ahmedabad extending the period for a further period of six months to put up the construction as per the NA permission and extending the NA permission for a further period of six months and when original NA permission has not been challenged, the revisional authority has materially erred in directing to give right of way to respondent No.1.

8. Shri Trilok J. Patel, learned advocate appearing on behalf of respondent No.1 has submitted that as such respondent No.1 is not concerned with the NA use permission with regard to land bearing Block Nos.225 and 226 and respondent No.1 is only concerned with right of way from the aforesaid two blocks and to go to his land bearing Block No.224. He has further submitted that even while granting NA use permission vide order dated 26-6-1991 and as per condition No.3 there is a right of way provided to go to land bearing Block No.224 and therefore, it is requested to dismiss the present Special

Civil Application.

9. Heard learned advocates appearing on behalf of the parties.

10. It is required to be noted that the dispute with regard to right of way is continued. Respondent No.1 lost before the Deputy Collector under the provision of the Mamlatdar Courts Act, which was a subject matter of Special Civil Application No.3608 of 2006. The proceedings before the revisional authority i.e. Principal Secretary (Appeals), Revenue Department, State of Gujarat under Section 211 of the Code was challenging the order passed by the District Panchayat granting extension of NA use permission for a further period of six months only and in that proceedings, it was not open for the Principal Secretary (Appeals), Revenue Department, State of Gujarat to decide the dispute with regard to right of way. The dispute with regard to right of way is required to be decided either under the Mamlatdar Courts Act (by way of temporary arrangement) and/or by the civil court. Under the circumstances, the direction issued by the Principal Secretary (Appeals), Revenue Department, State of Gujarat in its impugned order dated 16-2-2006/18-2-2006 passed in Revision

Application No.1 of 2005 and the said order is required to be quashed and set aside subject to the ultimate order that may be passed by the civil court in a suit that may be filed by respondent No.1 herein as stated above and establishing right of way, if any by respondent No.1.

11. For the reasons as stated above, Special Civil Application No.5278 of 2006 is allowed. The impugned judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 16-2-2006/18-2-2006 in Revision Application No.1 of 2005 is hereby quashed and set aside subject to the observations made hereinabove. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

12. So far as Special Civil Application No.3608 of 2006 is concerned, the same is permitted to be withdrawn by the petitioner of Special Civil Application No.3608 of 2006 as the petitioner proposes to file civil suit for a relief of declaration and permanent injunction with regard to right of way as stated above and the parties are directed to maintain status quo as on today till 21st May, 2006 as stated above.

(M.R.SHAH,J.)

shekhar/-